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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/530,202	04/26/2000	NORIKO SAKASHITA	000466	3928

23850 7590 11/14/2002

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EXAMINER

EGWIM, KELECHI CHIDI

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 11/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/530,202

Applicant(s)

SAKASHITA ET AL.

Examiner

Dr. Kelechi C. Egwim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 October 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All   b) ☐ Some \*   c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other:  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/4/02 has been entered.

### ***Claim Rejections - 35 USC § 102/103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-4 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, 35 U.S.C. 103(a) as being unpatentable over Kishida et al., Tuzuki et al., Matsuba et al. (US' or EP') or GB 1378434 for reasons cited in previous Office actions.

### ***Response to Arguments***

4. Applicant's arguments filed 10/4/02 have been fully considered but they are not persuasive.

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5. Regarding the "at least 0.24" of Tuzuki et al and the "at least 0.41" of Matsuba et al. verses applicant's claimed "at least 0.5", the Examiner respectfully disagrees with applicant arguments. "At least 0.24" is interpreted as encompassing 0.24 and any number larger than 0.24, including 0.5 and any number  $>0.5$ . Likewise, "at least 0.41" is interpreted as encompassing 0.41 and any number larger than 0.41, which includes 0.5 and any number  $>0.5$ . If not anticipation, this is at least obviousness. Ranges encompassing 0.5 and above are still taught by the references. See Ex parte Lee, 31 USPQ 2d 1105 (Bd. Pat. App. & Inter. 1993). See MPEP § 2131.03. Applicant **admits** on the record that the prior art at least "suggests 'at least 0.5'" (see the bottom of page 3 in response.

Regarding the argument that none of the prior art examples fall within the range presently claimed, applicant is reminded that the prior art teachings are not limited to the examples. While the prior art may not contain a specific example within the claimed ranges, the ranges disclosed in the reference still encompass that claimed by applicant.

Even if assuming that the prior art reference does not meet the requirements of 35 U.S.C. 102, it would still have been obvious to one of ordinary skill in the art, at the time the invention was made, to arrive at the same inventive composition because the disclosure of the inventive subject matter appears within the generic disclosure of the prior art. Applicant has not shown unexpected result in comparison with the cited references that teach viscosities greater than or equal to 0.24 or greater that or equal to 0.41.

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6. Regarding the Declaration, while the declaration apparently develops a formula for converting specific viscosity in chloroform to specific viscosity in benzene, it has not demonstrated that the claimed viscosity of at least 0.5 is out of the scope of the specific viscosities taught by the prior art ( i.e.,  $\geq 0.24$  or  $\geq 0.41$ ).

7. Regarding the difference in the monomers and adding amounts of initiator claimed and those taught by the cited prior art, it is noted that there is no "adding amount of initiator" recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Further, in the abstract, Kishida et al. teach two-stage polymer process additives to vinyl chloride resins, wherein the first stage is prepared from more than 60 wt% of methyl methacrylate and the second stage is prepared in the presence of the first stage polymer from acrylic acid esters.

In col. 1, lines 10-12 and 55-68 and col. 2, lines 1-16, Tuzuki et al. teach two-stage polymer process additives to vinyl chloride resins wherein the first stage is prepared from more than 85.71 wt% of methyl methacrylate and the second stage is prepared in the presence of the first stage polymer from acrylic and methacrylic esters except methyl methacrylate and 40 wt% or less of methyl methacrylate, and wherein the polymers have specific viscosities greater than or equal to at least 0.5.

Matsuba et al. [(US' col. 2, lines 42-68 and col. 3, lines 1-12) or ( EP' page 3, lines 10-21)] teach two-stage polymer process additives to vinyl chloride resins wherein

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the first stage is prepared from 50 to 95 wt% of methyl methacrylate and the second stage is prepared in the presence of the first-stage polymer from 20 to 80 wt% of acrylic and methacrylic ester except methyl methacrylate, the balance being methyl methacrylate or other vinyl monomers, wherein the two-stage polymer has a specific viscosity of 1 or more.

In page 2, lines 60-86 and the examples, GB 1378434 teach two-stage polymer process additives to vinyl chloride resins wherein the first stage is prepared from essentially methyl methacrylate with optional minor amounts of other (meth)acrylate esters and vinyl monomers and the second stage is prepared in the presence of the first stage polymer from a mixture consisting essentially of acrylic and methacrylic ester except methyl methacrylate, with optional minor amounts of methyl methacrylate, and wherein the polymers have specific viscosities of at least 0.5.

Thus, the rejections are maintained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Kelechi C. Egwim whose telephone number is (703) 306-5701. The examiner can normally be reached on M-T (7:30-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (703) 308-2450. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.

A handwritten signature in black ink, appearing to be 'KCE' followed by a stylized flourish.

KCE

November 13, 2002